

No. 6406

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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PAUL HERRMANN,

Appellant,

vs.

NEW YORK LIFE INSURANCE COMPANY,

Appellee.

*Appellant's Brief*

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Upon Appeal from the United States District Court  
for the District of Oregon.

HON. R. S. BEAN, Judge.

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C. T. HAAS and E. B. SEABROOK,

Attorneys for Appellant.

CLARK & CLARK,

HUNTINGTON, WILSON & HUNTINGTON,

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PAUL P. O'BRIEN,  
CLERK



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## STATEMENT

This is a companion case to the case of Henry Heine vs. New York Life Insurance Company, which is also on appeal to this Court. These two cases were argued together in the lower court and the essential facts are almost identical.

This case, like the Heine case, was commenced in the State Court, and was thence removed to the District Court upon petition of the defendant.

The causes of action are transitory in nature, being for damages for repudiation and breach of certain insurance contracts.

It appears from the verified petition for removal (page ~~4~~<sup>6</sup> Trans. of Rec.) that plaintiff is a citizen, resident and subject of Germany, and that defendant is a citizen of the United States, and that the controversy involves more than \$3000.00, and that the District Court has jurisdiction of the cause. These facts being alleged by defendant cannot be disputed by it. Plaintiff conceded them to be true, so there was and is no issue on them.

The Second Amended Complaint (p. <sup>10</sup> T. of Rec.) contains four separate causes of action for damages for the repudiation and breach of four separate policies of life insurance issued by the defendant. The policies are set forth as Exhibits A, C, D and E, attached to the answer of defendant to the original complaint (pp. <sup>128</sup> to <sup>168</sup> T. of Rec.). In the second

amended complaint they are pleaded by reference to the said exhibits attached to the answer.

The first cause of action arises out of Exhibit A, a 20-year endowment policy issued to Ludwig Schnell on February 25, 1905, and numbered 1,554,478, for 9000 marks, payable in 20 years, on December 31, 1924. The policy also provides for the payment of annual proportionate shares of the profits of the company.

It is alleged that the insured survived the 20-year period and was alive on and after December 31, 1924; that said insured complied with the conditions of the policy and demanded the 9000 marks and certain unpaid profits, which had accrued, but that payment was denied and that defendant repudiated the contract and refused to be bound thereby. Because of such repudiation of the contract plaintiff seeks damages in American dollars.

The second cause of action arises out of a 20-year endowment policy issued on July 12, 1902, to Martin Loeb for 20,000 marks and numbered 1,501,182, which policy is Exhibit C attached to the answer.

As in the first cause, the insured survived the 20-year period and demanded payment of the insured sum as well as the accrued profits, but defendant repudiated the contract and refused to be bound thereby. Because of such repudiation plaintiff seeks damages in American dollars.

The third cause of action arises out of a 20-year endowment life insurance policy issued by defendant to Hermann Kaiser-Bluth on September 24, 1902, for 30,000 marks and is numbered 1,505,347, which policy is Exhibit D attached to the answer.

As in the preceding causes of action, the insured survived the 20-year period and demanded payment, but defendant repudiated the contract and refused to be bound thereby, and plaintiff seeks damages for such repudiation.

The fourth cause of action arises out of a 25-year endowment life insurance policy issued by defendant to Wilhelm Stadelmeyer on December 7, 1903, for 10,000 marks and is numbered 2,508,291, which policy is Exhibit E attached to the answer.

The policy provides that after it is in force for one full year the insured might convert said policy into a premium free policy for a certain amount to be determined from a table contained in said policy, which amount was to be paid on December 7, 1928. Said insured exercised his option to so convert his policy to a premium free policy for 600 marks, and defendant converted the same as agreed, whereby said insured became entitled to 600 marks on December 7, 1928. On December 7, 1928, insured was alive and demanded payment of the amount due under said policy, but defendant repudiated the contract and refused to be bound thereby. Because of such repudiation plaintiff seeks damages.

Each of these four causes of action have been assigned to plaintiff after the said repudiation by defendant of the contracts.

After the removal of the action to the Federal Court below, defendant filed a motion to dismiss the action for want of jurisdiction, or, as an alternative motion, to dismiss the same in the exercise of the court's discretion as to whether or not it would exercise jurisdiction. (P<sup>199</sup> T. of Rec.).

The Court sustained said motion and dismissed the action, and plaintiff has appealed from such action of the lower court.

The assignments of errors are as follows:

### I

That the United States District Court for the District of Oregon erred in refusing and failing to rule and decide that said Court had jurisdiction of the said cause vested in and imposed upon it by Act of Congress.

### II

That the United States District Court for the District of Oregon erred in holding and adjudging that said Court had a discretion as to whether or not it would retain jurisdiction of said cause.

### III

That the United States District Court for the District of Oregon erred in rendering and entering said



judgment of the first day of December, 1928, wherein plaintiff's complaint was dismissed.

#### IV

That said United States District Court for the District of Oregon erred in refusing to retain jurisdiction of said cause and in refusing to try and determine the issues thereof on the merits.

(P.<sup>224</sup> T. of Rec.).

#### ARGUMENT

The points involved on this appeal have been fully argued and presented in the said case of Heine vs. N. Y. Life Ins. Co., now pending before this Court, and we respectfully refer to Appellant's Brief filed in that cause and submit this appeal thereon

Respectfully submitted,

E. B. SEABROOK,

C. T. HAAS,

Attorneys for Appellant.

